



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences

Appellant : Scott Edward Klopfenstein
Serial No. : 10/091,816
Filed : March 6, 2002
For : Method and Apparatus for Adaptively Storing Program Guide Data
Examiner : Jason P. Salce
Art Unit : 2611

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SUPPLEMENTAL BRIEF ON APPEAL

May It Please The Honorable Board:

Appellant hereby requests reinstatement of the Appeal filed on April 20, 2004 from the final rejection of claims 1-20, in accordance with 37 C.F.R. §1.193(b)(2)(ii) and MPEP §1208.02. Appellant waives an Oral Hearing for this appeal.

In view of the payment of the Appeal fee of \$330.00 with Appellant's Brief on Appeal filed on April 20, 2004, it is respectfully submitted that no fee is due (in accordance with 37 C.F.R. §1.193(b)(2)(ii) and MPEP §1208.02). However, should an additional fee be due, please charge any additional fee, or credit overpayment, to Deposit Account 07-0832. Three copies of the Supplemental Brief are included.

Certificate of Mailing under 37 CFR 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in a postage paid envelope addressed to: Mail Stop: Appeal Briefs - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.

Signature

Date:

August 11, 2004

I. REAL PARTY IN INTEREST

The real party in interest of Application Serial No. 10/339,681 is the Assignee of record:

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Indianapolis IN 46290

II. RELATED APPEALS AND INTERFERENCES

There are currently, and have been, no related Appeals or Interferences regarding Application Serial No. 10/091,816 known to the undersigned attorney.

III. STATUS OF THE CLAIMS

Claims 1-20 are rejected and the rejection of claims 1 - 20 are appealed.

IV. STATUS OF AMENDMENTS

All amendments were entered and are reflected in the claims included in Appendix I.

V. SUMMARY OF THE INVENTION

The present claimed invention discloses a method and apparatus for storing program guide information for a plurality of programs in a receiver. The present claimed invention determines a program guide information level in response to user interaction with a graphical object indicative of the program guide information level. In response to said program guide information level, a program guide schedule length is determined. Program guide data according to the program guide information level and program guide schedule

length is then stored. Independent claims 1, 13 and 20 all include similar limitations as those discussed above.

VI. ISSUES

Whether the subject matter of claims 1, 3-7, 10-11, and 20 are anticipated under 35 USC 102(e) by Harada et al. (U.S. 6,246,442).

Whether the subject matter of claims 2, 8-9, and 12-19 are unpatentable under 35 USC 103(a) over Harada et al. (U.S. 6,246,442) in view of Bruette et al. (U.S. 5,694,176).

VII. Grouping of Claims

Claims 2 – 12 are dependent on independent claim 1. Claims 14 – 19 are dependent on independent claim 13. Claim 20 is independent.

VIII. Arguments

Harada et al. (US 6,246,442), when taken alone or in combination with Bruette et al. (U.S. 5,694,176) does not render the present invention as claimed in claims 1 – 20 unpatentable under 35 U.S.C. §§ 102(e) and 103(a). Thus, reversal of the Final Rejection (hereinafter “rejection”) of Claims 1-20 is respectfully requested.

Overview of the Cited References

Harada et al. disclose displaying a broadcasting program guide table, in which a group of program guide elements of a broadcasting program guide is arranged in a cell for each broadcasting program guide. A group of particular program guide elements of one broadcasting program guide is selected in an information element selecting unit from a

plurality of program guide elements of the broadcasting program guide according to a detail degree input by a user for each broadcasting program guide. The detail degree corresponds to an information volume of the group of particular program guide elements. In a display information table producing unit, a particular layout of a plurality of cells arranged along each display axis is determined according to the detail degree and particular program guide arrangement information stored in advance. The particular program guide arrangement information indicates a guide attribute along each display axis. The groups of particular program guide elements of the broadcasting program guides are set in the cells to be arranged along each display axis on the basis of the guide attribute, and an image of a broadcasting program guide table indicating the groups of particular program guide elements arranged in the cells is displayed in a display image output unit. Therefore, the user can easily compare the broadcasting program guides arranged in a desired layout at the same desired detail degree.

Bruette et al. disclose an apparatus for generating an on-screen television program guide. The apparatus generates a main menu of a program guide, which includes program source information and program event information for a plurality of program sources, and further generates navigation menus for allowing a viewer to modify the program guide. The navigation menus are generated so as to over-write only a portion of the main menu of the program guide.

1. Rejection of Claims 1, 3-7, 10-11, and 20 under 35 U.S.C. 102(e) as being anticipated by Harada et al. (U.S. Patent No. 6,246,442).

Reversal of the first rejection of claims 1, 3-7, 10-11, and 20 under 35 U.S.C. 102(e) as being anticipated by Harada et al. is respectfully requested. The rejection makes the following crucial errors in interpreting the cited reference.

A. The rejection erroneously states that claims 1, 3-7, 10-11, and 20 are anticipated by U.S. Patent No. 6,246,442 issued to Harada et al. under 35 U.S.C. 102(e).

ISSUES

A principal issue here is whether or not Harada et al. disclose or suggest determining a program guide information level in response to user interaction with a graphical object indicative of said program guide information level as alleged on page 4, point 2 of the rejection and whether or not Harada et al. disclose or suggest determining, in response to said program guide information level, a program guide schedule length.

It is respectfully submitted that Harada et al. neither disclose nor suggest the above feature for the following reasons. Harada et al. recites an apparatus for displaying information representing a program guide in a cell arrangement. This apparatus determines which information is to be included in each cell based upon user input and arranges the cells and cell size based upon this information. Harada et al. neither disclose nor suggest “determining a program guide information level in response to user interaction with a graphical object indicative of said program guide information level” as in the present claimed invention. The present invention determines the amount of information within the transmitted program guide to be downloaded by the receiver based upon user input. Harada et al. only disclose altering the data included in a displayed cell based on user input.

Applicant respectfully disagrees with the Examiner’s response to the arguments contained in the September 8, 2003 response. Specifically, the Examiner erroneously states that Harada et al. disclose “interaction with a graphical object indicative of said program

guide information level”. The Examiner points to column 14, line 51 – 63 for support of this assertion. However, Harada et al. neither disclose nor suggest “interaction with a graphical object indicative of said program guide information level” as in the present claimed invention. In fact, in the above cited portion, Harada et al. merely disclose “inputting a display request and a particular detail degree to the input unit”. Furthermore, Figure 5 of Harada et al. shows a table displaying a detail degree and what information is included therein. No where does Harada et al. disclose or suggest “determining a program information level in response to user interaction with a graphical object indicative of said program guide information level” as in the present claimed invention. Rather, Harada et al. teaches that upon user input, a selecting unit selects, based on the detail correspondence table, a group of particular program guide elements of one broadcasting program guide. Thus, Harada et al. neither disclose nor suggest “determining a program information level in response to user interaction with a graphical object indicative of said program guide information level” as in the present claimed invention.

Additionally, Harada et al. neither disclose nor suggest “determining, in response to said program guide information level, a program guide schedule length” as in the present claimed invention. Harada et al. generates a cell layout and guide arrangement based upon the amount of data to be displayed within each cell. This is unlike the present claimed invention, which determines the length of time the program guide schedule will extend into the future based upon the program guide information level, i.e. the amount of data downloaded for each program. The Examiner erroneously cites column 13, lines 43 – 53 in support of his assertion that Harada et al. disclose “determining, in response to said program guide information level, a program guide schedule length” as disclosed in the present claimed invention. In fact, Harada et al. merely disclose “an information selecting unit for holding a detail correspondence table in which the correspondence of a group of program guide elements to a detail degree is listed for each detail degrees...[for] selecting a

group of particular program guide elements corresponding to the particular degree detail in the detail correspondence table”. In other words, the information selecting unit selects the “amount” of particular program guide elements to be displayed in a program guide cell based on the input detail degree. It is clear that Harada et al. is concerned with an amount of information to be displayed whereas the present claimed invention is concerned with “determining...a program guide schedule length”. Thus, Harada et al. neither disclose nor suggest “determining, in response to said program guide information level, a program guide schedule length” as in the present claimed invention.

The Examiner also erroneously points to column 14, lines 3 – 15 as well as Figure 7 to support his assertion that Harada et al. disclose “determining, in response to said program guide information level, a program guide schedule length”. However, Figure 7 and lines 3 – 15 of column 14 of Harada et al. disclose cell layout information corresponding to the detail degree from the selecting unit. Harada et al. neither disclose nor suggest “storing program guide data according to said program guide information level and said program guide schedule length” as in the present claimed invention. Rather, Harada et al. disclose storing a layout correspondence table in Figure 7 (referred to by the Examiner). This figure illustrates a layout correspondence of one piece of cell information to a detail degree and program guide arrangement for each piece of data to be displayed (see column 15, lines 26-48). For example, the detail degree indicates the amount of data to be included within the cell. The program guide arrangement information indicates the type of genre for the X-axis (e.g. channel) and the start time for the Y-axis. The cell layout indicates the size of the cell (e.g. 6 rows X 8 columns). This is unlike the present claimed invention, determines a program schedule length (the amount of time into the future the schedule will extend, e.g. 2 days, 2.5 days, etc.), which is dependent upon the determined program guide information level.

Furthermore, the present claimed invention offers a utility that can be distinguished from Harada et al. The object of Harada et al. is to provide [...] an information display apparatus in which pieces of information are compared with each other at a user's desired volume level on condition that the pieces of information are arranged as many as possible (See column 1, lines 55-58). By contrast, the present claimed invention, as set forth in independent claims 1, 13, and 20, proposes a method and apparatus for storing program information for a plurality of programs in a receiver. The method and device store program guide data according to said program guide information level and said program guide schedule length. The present claimed invention maximizes efficiency in the memory 204 by determining a program information level desired by the viewer, the program guide information level determining the program guide schedule length. Harada et al. offer a viewer a desired display order with regard to cell size and content, merely "hiding" unused information already stored in the memory.

Claim 3 recites in pertinent part "said schedule length is increased if said program guide information level is decreased". Similarly as discussed above regarding claim 1, Harada et al. neither disclose nor suggest "determining, in response to said program guide information level, a program guide schedule length" as in the present claimed invention. Figures 8 and 9 of Harada et al. merely show a plurality of cells displayed side-by-side. The cells displayed in each respective Figure are differently sized based on the detail degree chosen. The size of the cells of Harada et al. is not the same as "schedule length" of the present claimed invention. Specifically, as shown in Figure 6 and in the corresponding description of the present application, if the program guide information level is decreased then length of the schedule increases by days or fractions thereof. For example, as shown in Figures 5 and 6 of the present application, if the program guide information level is at a maximum amount then "the schedule length" is 2.5 days whereas, if the program guide information level is at a minimum amount then "the

schedule length” is 4 days. Thus, it is clear that Harada et al. discloses cell size not schedule length as in the present claimed invention. Therefore, Harada et al. neither disclose nor suggest “determining, in response to said program guide information level, a program guide schedule length” as in the present claimed invention. Furthermore, Harada et al. neither disclose nor suggest “said schedule length is increased if said program guide information level is decreased.

Claim 4 recites “said schedule length is decreased if said program guide information level is decreased”. Similarly as discussed above regarding claims 1 and 3, Harada et al. neither disclose nor suggest “determining, in response to said program guide information level, a program guide schedule length” as in the present claimed invention. Harada et al. merely discloses the size of the cells increasing or decreasing based on the detail degree selected by the user. Harada et al. neither disclose nor suggest anything concerning “a schedule length” as in the present claimed invention. Harada et al. also neither disclose nor suggest “said schedule length is decreased if said program guide information level is increased” as in the present claimed invention.

Independent claims 13 and 20 include similar limitations as claim 1 and thus, all arguments discussed above with respect to claim 1 are applicable to both claims 13 and 20.

Consequently, it is submitted that claims 1, 13 and 20 are patentable under 35 USC 102(e) and reversal of its rejection is respectfully requested. As claims 3-7, 10-11 are dependent on claim 1, a reversal of the rejection of these claims is further respectfully requested.

Therefore, it is respectfully submitted that claims 1, 3-7, 10-11, and 20 are patentable under 35 U.S.C. 102(e) and reversal of the rejections of these claims is respectfully requested.

2. Rejection of claims 2, 8-9 and 12-19 under 35 USC 103(a) as being unpatentable over Harada et al. (US 6,246,442) in view of Bruette et al. (U.S. 5,694,176).

Reversal of the Final Rejection (hereinafter termed "rejection") of claims 2, 8-9 and 12-19 under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,246,442 issued to Harada et al. in view of US Patent 5,694,176 issues to Bruette et al., is respectfully requested. The rejection makes the following crucial errors in interpreting the cited reference.

- A. The rejection erroneously states that claims 2, 8-9 and 12-19 are unpatentable over US Patent 6,246,442 issued to Harada et al. in view of US Patent 5,694,176 issues to Bruette et al. under 35 U.S.C. 103(a).

ISSUES

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596, 1598 (Fed.Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (CCPA 1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion, or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. *Uniroya, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed.Cir. 1988), *cert. denied*, 488 U.S. 825 (1988); *Ashland Oil Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 28, 293, 227 USPQ 657, 664 (Fed.Cir. 1985), *cert. denied*, 475 U.S. 1017 (1986); *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed.Cir. 1984). These showings by the Examiner are an

essential part of complying with the burden of presenting a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed.Cir. 1992).

A principal issue here is whether Harada et al. in view of Bruette et al. disclose a method for storing program guide information for a plurality of programs in a receiver by “determining a program guide information level in response to a user interaction with a graphical object indicative of said program guide information level” and “determining, in response to said program guide information level, a program guide schedule length” as alleged in the rejection.

Similarly as discussed above regard the rejections of claims 1 and 13, it is respectfully submitted that neither Harada et al. nor Bruette et al disclose the above features for the following reasons. Specifically, as discussed above, Harada et al. neither disclose nor suggest “determining a program guide information level in response to a user interaction with a graphical object indicative of said program guide information level” as in the present claimed invention. Additionally, Harada et al. neither disclose nor suggest “determining, in response to said program guide information level, a program guide schedule length” as in the present claimed invention.

Bruette et al. recite a device for generating a main menu of a program guide, which includes program source information and program event information for a plurality of program sources, and means for generating navigation menus for allowing a viewer to modify the program guide (See column 2, lines 1-9). The apparatus in Bruette et al. further include user-controlled navigation menus for classifying and displaying program source information and that overwrites only a portion of the main menu (See column 2, lines 1-20). However, in contrast to the invention in Bruette et al., the present claimed invention offers a user-controlled menu that determines a program guide information level and a program guide schedule length. In other words, the present invention determines the amount of program information downloaded into the memory 204, thereby providing

maximum efficiency based on the user's needs. Bruette et al. neither disclose nor suggest user control of program information level, but rather merely presents an advance over the display and classification of such program information.

Even if Bruette et al. suggest the advances over the prior art described in claims 8-9 and 12-19, it neither discloses nor suggests recited features of claim 1 as done previously. In fact, by combining the system disclosed by Harada et al. with the system of Bruette et al., one would wind up with a system the controls the size and shape of cells to be displayed by a program guide that originates from one of a terrestrial broadcasting center and a satellite. However, this combination would not produce a system for “determining, in response to said program guide information level, a program guide schedule length” as in the present claimed invention. Specifically, both Harada et al and Bruette et al. fail to disclose “determining a program guide information level in response to user interaction with a graphical object indicative of said program guide information level” as in the present claimed invention. Additionally, both Harada et al. and Bruette et al. neither disclose nor suggest “determining, in response to said program guide information level, a program guide schedule length” as in the present claimed invention.

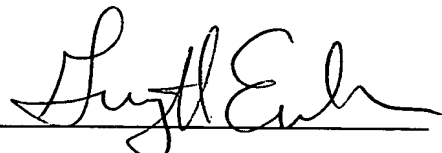
Consequently, it is submitted that as claims 1 and 13 are patentable over Harada et al. in view of Bruette et al. and a reversal of the rejection is respectfully requested. As claims 2, 8-9 and 12 are dependent upon claim 1 and claims 14-19 are dependent upon claim 13, it is respectfully requested the claims 2, 8-9 and 12-19 are also patentable over Harada et al. in view of Bruette et al. for the same reasons as claims 1 and 13 and a reversal of the rejection is further respectfully requested.

Therefore, it is respectfully submitted that claims 2, 8-9 and 12-19 are patentable over Harada et al. in view of Bruette et al. under 35 U.S.C. 103(a) and reversal of the rejections of these claims is respectfully requested.

IX Conclusion

Neither Harada et al. nor Bruette et al. disclose a system for storing program guide information for a plurality of programs in a receiver as in the present claimed invention. Specifically, both Harada et al and Bruette et al. fail to disclose "determining a program guide information level in response to user interaction with a graphical object indicative of said program guide information level" as in the present claimed invention. Additionally, both Harada et al. and Bruette et al. neither disclose nor suggest "determining, in response to said program guide information level, a program guide schedule length" as in the present claimed invention. Accordingly it is respectfully submitted that the rejection of Claims 1-20 should be reversed.

Respectfully submitted,
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APPENDIX I

APPEALED CLAIMS

1. (Original) A method for storing program guide information for a plurality of programs in a receiver, said method comprising:
determining a program guide information level in response to user interaction with a graphical object indicative of said program guide information level;
determining, in response to said program guide information level, a program guide schedule length; and
storing program guide data according to said program guide information level and said program guide schedule length.
2. (Original) The method of claim 1, wherein said graphical object comprises one of a cursor, a slide bar, a dial and a pie object.
3. (Original) The method of claim 1, wherein said schedule length is increased if said program guide information level is decreased.
4. (Original) The method of claim 1, wherein said schedule length is decreased if said program guide information level is increased.
5. (Original) The method of claim 1, wherein said program guide information comprises basic program information and extended program information.
6. (Original) The method of claim 5, wherein said program guide information level is defined as a percentage of program guide schedule length containing extended program information.
7. (Original) The method of claim 5, wherein said extended program information provides information regarding at least one of a program description, an actor, a director and a production note for a corresponding program.

8. (Original) The method of claim 1, wherein at least one of said plurality of programs is broadcast from one of a satellite and a terrestrial broadcasting center.

9. (Original) The method of claim 1, wherein each of said plurality of programs comprises at least one of a pre-recorded program, a live broadcast, and an advertisement.

10. (Original) The method of claim 1, wherein said program guide information comprises Advanced Program Guide (APG) information.

11. (Original) The method of claim 1, wherein said program schedule comprises an earlier portion and a later portion.

12. (Previously amended) The method of claim 11 further comprising:
identifying a reference time of a program object received for a program, where said program object comprises basic program information and extended program information for said a program; and

removing extended program information from said program object if said identified reference time is in said later portion of said program schedule; wherein,
said program object is stored as at least a portion of said programming guide data.

13. (Original) An apparatus for providing program guide information for each of a plurality of channels, said apparatus comprising:

a tuner, for tuning a signal including program guide information;
a demodulator, for demodulating said tuned signal to extract therefrom program guide information;
a memory, for storing said extracted program guide information and instructions;
and
a processor, for executing said instructions and performing thereby the following steps:

determining a program guide information level in response to user interaction with a graphical object indicative of said program guide information level;

determining, in response to said program guide information level, a program guide schedule length; and

storing program guide data according to said program guide information level and said program guide schedule length.

14. (Original) The apparatus of claim 13, wherein said graphical object comprises one of a cursor, a slide bar, a dial and a pie object.

15. (Original) The apparatus of claim 13, wherein said schedule length is increased if said level of program guide information is decreased.

16. (Original) The apparatus of claim 13, wherein said schedule length is decreased if said level of program guide information is increased.

17. (Original) The apparatus of claim 13, wherein said program guide information comprises basic program information and extended program information.

18. (Original) The apparatus of claim 17 wherein said level of program guide information comprises a percentage of said program schedule containing extended program information.

19. (Original) The apparatus of claim 13 wherein said program guide information comprises Advanced Program Guide (APG) information.

20. (Original) An apparatus for storing program guide information for a plurality of programs in a receiver, said method comprising:

means for determining a program guide information level in response to user interaction with a graphical object indicative of said program guide information level;

means for determining, in response to said program guide information level, a program guide schedule length; and

means for storing program guide data according to said program guide information level and said program guide schedule length.

APPENDIX II

TABLE OF CASES

1. *In re Fine*, 5 USPQ 2d 1600, (Fed Cir. 1988)
2. *ACS Hospital Systems Inc v. Montefiore Hospital*, 221 USPQ 929,933
(Fed. Cir. 1984)
3. *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (CCPA 1966)
4. *Uniroya, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438
(Fed.Cir. 1988), *cert. denied*, 488 U.S. 825 (1988)
5. *Ashland Oil Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 28, 293, 227 USPQ
657, 664 (Fed.Cir. 1985), *cert. denied*, 475 U.S. 1017 (1986)

APPENDIX III

LIST OF REFERENCES

<u>U.S. Pat. No.</u>	<u>Issued Date</u>	<u>102(e) Date</u>	<u>Inventors</u>
6,246,442	June 12, 2001		Harada et al.
5,694,176	December 2, 1997		Bruette et al.

BRIEF ON APPEAL

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